



Order below Exh. 114 in
Regular Civil Suit No. 228/2017
CNR Number is MHKO050022512017
(Passed on 07.01.2025)

This is an application by the plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure for temporary injunction.

02. The present application moved by the plaintiff to seek temporary injunction against defendant Nos. 1, 2, 3 to 3-A restraining them from interfering or causing obstruction in the suit property No. 1A belonging to the plaintiff.

03. The plaintiff has mentioned description of the suit property Nos. 1A and 1B in the first paragraph of the application. Infact it is an agricultural land admeasuring total area H. 2.17.50 R. belonging to the plaintiff. Gat No. 55 is situated at village Korochi, Taluka Hatkanangale, District Kolhapur. It is the specific contention of the plaintiff that, the suit property is exclusively belonging and possessed by him and despite of that, the defendants have arbitrarily tried to grab the suit property in the name of creating unlawful road / way through the suit property. Therefore, the plaintiff has specifically hit the action of defendant No. 1 – Village Panchayat, defendant No. 2 – Village Development Officer,

defendant No. 3 – Tahasildar, No. 4 – Block Development Officer, defendant No. 5 – District Collector and defendant No. 6 – Vijay Bindage. It is the contention of the plaintiff that, the defendants have no right to create any way or construct road through the suit property. Therefore, the notice given by the defendants regarding creating of new road is null and void and not binding on the plaintiff. Basically the present suit came to be filed with the said specific prayer.

04. On this, the defendants have also objected the application of temporary injunction contending that, the plaintiff has no right to obstruct the creation or construction of the road. It is also contended that, whatever the action taken or proceeding initiated by the Mamlatdar / Tahasildar and Government Authorities i.e. defendants are lawful and the Civil Court has no jurisdiction to try this issue. Further contended that, the defendants have taken proper action as per law and procedure, nothing is illegal in that. Defendants have denied the contentions of the plaintiff in toto. They have also denied the ownership of the plaintiff on the suit property. It is further contended that, this is a government project, number of people are depending upon said road. It is a public project. Only for the benefit of the plaintiff, the entire village people cannot be exploited. Hence, prayed for rejection of the application.

05. Considering rival contentions of both the parties, following points arose for my determination and I record my findings thereon with reasons as under.

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the plaintiff has made out prima-facie case ?	Yes
2	Whether balance of convenience lies in favour of the plaintiff ?	Yes
3	Whether the plaintiff would suffer irreparable loss, if injunction as prayed is not granted ?	Yes
4	What order ?	Application stands allowed.

REASONS

As to Point Nos. 1 to 3 :-

06. I heard both the parties orally and in writing. The plaintiff and defendants both have given written arguments at Exh. 155 and 157. I have gone through entire things. Perused record. Perused all the documents annexed with the plaint. Already an application under Order VII Rule 11 of the Code of Civil Procedure has been decided by the Court questioning the jurisdiction of this Court. It is held by this court in that order, Civil Court has jurisdiction to try the suit. Therefore, application got rejected.

07. As far as the present issue of road is concerned, both the plaintiff and defendants have contrary stories. According to the plaintiff, the suit properties belonging to him and therefore defendants cannot raise or construct any road therein. On the contrary, the defendants show that, it is a Government Project and the plaintiff has no right to obstruct that. This is a public issue. As far as this issue is concerned, already this Court has decided an application under Order VII Rule 11 holding that, this court has jurisdiction. Basically this suit came to be filed in the year 2017. Almost 7 years are completed. In this concern, the documentary evidence plays vital role. For that I have perused 7/12 extract of the suit property. It shows name of the plaintiff mentioned in the 7/12 extract to the record of suit property. While arguing before the Court, the learned court for the plaintiff has strongly mentioned that, the entire suit properties are belonging to the plaintiff. There is no any land pending i.e. pot kharab for any road projects of the government. He underlines the first column of the 7/12 extract (Exh.33) contending that, class B i.e. land reserved for road / pot kharab for road is not mentioned in the 7/12 extract. Rather class A land i.e. pot kharab is mentioned i.e. for pot kharab for water well. Therefore, according to the plaintiff, there is no any pot kharab land for road reserved as per 7/12 extract.

08. Having regard to these things, the plaintiff also emphasized on the notice given by the Tahasildar (Exh.34) by which the Tahasildar takes action against the plaintiff for closing the alleged road “Korochi Magh Panand Rasta” and road going to Hatkanangale. Therefore, 7/12 extract is a prima-facie evidence in favour of the plaintiff. As far as the notice of the Tahasildar is concerned i.e. (Exh.34), it does not reveal anything like the old existence of the road or any land acquired by the government for the said purpose etc. In order to wipe out the claim of the plaintiff, defendants ought to have produced certain documentary evidence to show the old existence of the road or acquisition of the land for the said purpose by following due process of law.

09. As far as the defendants are concerned, they have produced the village Map No. 1086 / 68 / 4966 dated 04-11-1987 xerox copy. I perused that. The defendants have also mentioned in their written argument about the said map and existence of the road etc. But after going through careful perusal of the map, other documents produced by the defendants, there is no clear picture of the road. The map is not sufficient to conclude the existence of the alleged road. It is still disputed. Therefore, adjudication is definitely needed on this point. If this court relies the defendants and rejected the application for temporary injunction, the plaintiff may suffer irreparable loss. If the road is constructed, it would

need further litigation for mandatory injunction etc. It would cause multiplicity of proceeding. It would also cause several disputes in future and importantly, it may deprive the plaintiff from proving his right on the suit property. If the suit property is taken up by the defendants, it is irreversible in future and may cause irreparable loss to the plaintiff.

10. Having regard to entire facts and circumstances, written arguments, documents, I am of the considered view that, this is not a stage to allow the defendants to raise a construction of road through the suit property. Before initiating or allowing the construction on the suit property, the right of both the parties will have to be adjudicated. Hence, temporary injunction is justified. Hence, I answer point Nos. 1 to 3 accordingly and pass the following order :-

ORDER

01. The application is allowed.

02. The defendants are hereby restrained from creating or constructing any road or way or path from the suit property till the final disposal of the suit.

Date: 07.01.2025

(**B. T. Yengade**)
Jt. Civil Judge, Senior Division,
Ichalkaranji.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. File Order are same, word to word, as per the original Order.

Name of Stenographer	S. R. Sarnaik
Name of Court	B. T. Yengade Jt. C.J.S.D., Ichalkaranji.
Date of Order	07-01-2025
Order signed by the Presiding Officer on	07-01-2025
Order uploaded on	07-01-2025